

The Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

8 ERWIN SINGH BRAICH,) No. CV7 0177C
9 Plaintiff,)
10 vs.)
11 STEVE MITTELSTAEDT, et al,) **McLEAN DEFENDANTS' NOTICE**
12 Defendant.) **OF RELEVANT RULING AND**
13) **JOINDER IN KPMG STATUS**
14) **REPORT**

I. INTRODUCTION

16 COME NOW, the McLean Defendants, consisting of Brian G. McLean and McLean &
17 Armstrong LLP, and (a) provide notification to this Court of a relevant ruling by the Supreme Court
18 of British Columbia sitting in bankruptcy, and (2) join in KPMG's Third Status Report and Renewed
19 Request for Dismissal ("Third Status Report").

II. REPORT OF RELEVANT DECISION

22 In its order dated August 7, 2007, this Court ordered the McLean Defendants to supply the
23 Court with a copy of any written order issued by the Canadian Bankruptcy Court (which is, the
24 Supreme Court of British Columbia, Canada) on the question of whether § 215 of the Canadian

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1 Insolvency Act ("BIA") applies to the McLean Defendants in their role as counsel for the Bank-
2 ruptcy Trustee, KPMG. On November 7, 2007, the Canadian Bankruptcy Court did in fact rule on
3 that issue and determined that § 215 extends to and protects the McLean Defendants. Justice
4 Brenner noted that in his complaint the plaintiff alleges that all of the acts attributed to the McLean
5 Defendants were within the scope of their employment as attorney for KPMG, the bankruptcy
6 Trustee. Justice Brenner then went on to rule, as set forth in paragraph 50 and 51 of his ruling, as
7 follows:

9 50. In my view, the benefits conferred on a trustee by s. 215 should also be
10 conferred on its lawyer – agent acting within the scope of his duties in
11 representing the trustee. When a lawyer so acting under the BIA, there is an
 identity of interest between the trustee and its lawyer

12 51. McLean and his law firm are entitled to the protection of s. 215.¹

13 The McLean Defendants respectfully submit that the above quoted ruling by Justice Brenner
14 resolves the issue discussed in Part III (C) of this Court's August 7, 2007 order.

15 Justice Brenner also determined that § 215 of the BIA applies to actions alleged to have been
16 taken in the United States, as more fully explored in KPMG's Third Status Report.
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18 **III. JOINDER IN KPMG'S THIRD STATUS REPORT**

19 The McLean Defendants join in the statements and request made by KPMG in its Third
20 Status Report and specifically join in KPMG's renewed request for dismissal. As pointed about by
21 KPMG in its Third Status Report, this Court deferred to the Supreme Court of British Columbia for
22 determination of the question of whether § 215 of the BIA applied extraterritorially, that is, to the
23 actions alleged by the plaintiff to have occurred in the United States. Justice Brenner ruled unequiv-

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25 ¹ Judge Brenner's written decision, denominated "Reasons for Judgment", was submitted to this Court by KPMG's
 counsel as part of KPMG's Third Status Report.

1 ocially that § 215 of the BIA does in fact apply extraterritorially to the events that plaintiff alleges
2 occurred in Washington State and, therefore, plaintiff must first seek leave from the Canadian Bank-
3 ruptcy Court before he may bring or maintain this action against KPMG and the McLean
4 Defendants.

5 On page 10 of this Court's August 7, 2007 order, the Court stated:

6 Should the Canadian court determine that section 215 is indeed intended to apply
7 extraterritorially in situations such as that before the Court here, this Court will then
8 have properly before it the second and related "jurisdictional" question of whether
9 this Court *should* decline to exercise jurisdiction over this suit as a matter of
international comity

10 (Emphasis in original).

11 Further, in footnote no. 7 of its August 7, 2007 order, this Court indicated it was inclined to defer to
12 Canadian law in this instance. This Court expressed the view that should the Canadian court
13 determine that § 215 is intended to apply to this action, it will be difficult for Plaintiff to persuade
14 the Court that it should not defer to Canadian law.

16 This Court has deferred to a Canadian court on the issue of extraterritorial reach of § 215 of
17 the BIA. This determination has been made by a Canadian court. Accordingly, it is appropriate for
18 this Court to once again consider dismissal of the complaint against the McLean Defendants and
19 KPMG for the reasons set forth in the motions to dismiss previously filed by those parties. If the
20 Court is undecided on the question of deference to Canadian law, or if the Court otherwise deems it
21 useful or appropriate, the McLean defendants would welcome the opportunity to submit further
22 briefing on the issue of whether this Court should defer to Canadian law under principles of comity.
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1 The McLean defendants submit, however, that the comity issue was extensively briefed in its motion
2 to dismiss and the Court was thereby duly advised of the applicable law and relevant circumstances.

3 It is now clear that under Canadian law, which this Court has indicated it is inclined to
4 recognize, plaintiff must first obtain leave from the Supreme Court of British Columbia before he
5 can prosecute his claims against the McLean Defendants. The plaintiff has not obtained such leave
6 and is, therefore, not permitted to bring or maintain this action. Accordingly, the complaint should
7 be dismissed as against the McLean Defendants without further delay.
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9 DATED this 15th day of November, 2007.

10 BUCKNELL STEHLIK SATO & STUBNER, LLP

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/s/ Jerry N. Stehlik
Jerry N. Stehlik, WSBA #13050
of Attorneys for McLean Defendants

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